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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF LOS ANGELES

13 CHURCH OF SCIENTOLOGY)
14 INTERNATIONAL, a California)
not-for-profit religious)
15 corporation;)
16 Plaintiffs,)
17 vs.)
18 GERALD ARMSTRONG; DOES 1)
through 25, inclusive,)
19 Defendants.)
20)
21 _____)

No. BC 052395
DEFENDANT ARMSTRONG'S
MEMORANDUM IN OPPOSITION TO
MOTION IN LIMINE RE ACTIONS
OF SCIENTOLOGY
Date: March 5, 1993
Time: 9:30 a.m.
Dept: 86
Trial Date: May 3, 1993
Discovery Cut Off: None Set
Motion Cut Off: None Set

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21 I. INTRODUCTION

22 Motions in limine generally are proper to circumscribe
23 evidence that would be presented to a jury so as to prevent the
24 judgment of the jury from being skewed by exposure to information
25 that is not admissible. Courts, however, are educated in the law,
26 better equipped to make evidentiary rulings at the time of the
27 presentation of the evidence, and not susceptible to the prejudice
28

1 which can contaminate the judgment of a jury. Since the instant
2 contempt proceeding is not before the jury, a motion in limine
3 would seem unnecessary. Armstrong, however, will respond to it as
4 follows.

5 One of Armstrong's strongest defenses to the OSC re Contempt is
6 that by its own terms the injunction is ambiguous and vague and
7 such ambiguity has been amplified by the positions asserted by
8 Scientology's counsel during the course of this litigation.

9 During the hearing on May 27, 1992 before Judge Sohigian
10 Scientology stated that Armstrong's performance of routine
11 clerical work not requiring the use of the knowledge he gained
12 while a member of Scientology would not constitute a violation of
13 the contract. Moreover, such position was stated again by counsel
14 during the course of Armstrong's deposition.

15 In the instant matter, Scientology has shifted its position
16 and now claims that the very same conduct does constitute
17 violations of the order.

18 Armstrong contends that Scientology's shifts in legal
19 posture, accusations of Armstrong's commission of conduct which by
20 no stretch of the imagination could constitute violations of the
21 injunction, and the bringing of the instant OSC are all examples
22 of the imposition of the Fair Game Policy and Scientology's
23 singularly oppressive use of litigation as a tool of Fair Game.
24 Therefore, evidence relevant to both Fair Game, Scientology's
25 litigation strategies and animus toward Gerald Armstrong and his
26 attorneys is relevant to his defenses in this case.

27 Furthermore, Armstrong's defense that the contract
28 constitutes a violation of public policy which was obtained by

1 fraud both require the presentation of evidence antedating May 28,
2 1992.

3 **II. ACTIONS OF PLAINTIFF WHICH TEND TO SHOW SCIENTOLOGY'S USE OF**
4 **THE INJUNCTION IS HARSH AND DISCRIMINATORY IS RELEVANT TO**
5 **ARMSTRONG'S CONSTITUTIONAL DEFENSE**

6 **A. The Order May Be Attacked For Ambiguity**

7 It is beyond cavil that a defense to a charge of contempt is
8 that the order is ambiguous. An order of contempt cannot stand if
9 the underlying order is invalid. In re Blaze (1969) 271
10 Cal.App.2d 210, 212, 76 CR 551; In re Misener (1985) 38 Cal.3d
11 543, 558, 213 CR 569.

12 To hold a person guilty of contempt for violating an
13 injunction, the acts constituting the contempt must be
14 clearly and specifically prohibited by the terms of the
15 injunction. [Citations.] The party bound by an injunction
16 must be able to determine from its terms what he may or may
17 not do; he cannot be held guilty of contempt for violating an
18 injunction that is uncertain or ambiguous (Ibid.), just as he
19 may not be held guilty of violating a criminal statute that
20 fails to give him adequate notice of the prohibited acts.
21 (Brunton v. Superior Court (1942) 20 Cal.2d 202, 205, 124
22 P.2d 831, 833.)

23 Sorenson v. Superior Court (1969) 169 Cal.App.2d 73, 78, 74 CR
24 597. Any ambiguity in the court order alleged to have been
25 violated must be resolved in favor of the accused. Ibid.; In re
26 Blaze, supra at 212; Gottlieb v. Superior Court (1959) 168
27 Cal.App.2d 309, 313, 335 P.2d 714, 717.

28 No one may be punished in contempt for the disobedience of a
void order. Kreling v. Superior Court (1941) 18 Cal.2d 884, 885,
118 P.2d 470. If the court acts in excess of its jurisdiction in
issuing the underlying order, there is no basis for the order of
contempt. Elysium, Inc. v. Superior Court (1968) 266 Cal.App.2d
763, 765, 72 CR 355. "[A] broad meaning is given to the term
'jurisdiction.'" Bd. of Med. Examiners v. Terminal-Hudson

1 Electronics (1977) 73 Cal.App.3d 376, 388, 140 CR 757.

2 In this state it is clearly the law that the violation of an
3 order in excess of the jurisdiction of the reviewing court
4 cannot produce a valid judgment of contempt [Citations] and
5 that the "jurisdiction" in question extends beyond mere
6 subject matter or personal jurisdiction to that concept
7 described by us in Abelleira v. District Court of Appeal
8 (1941) 17 Cal.2d 280, at page 291 ... "Speaking generally,
9 any acts which exceed the defined power of a court in any
10 instance, whether that power be defined by constitutional
11 provision, express statutory declaration, or rules developed
12 by the courts and followed under the doctrine of *stare*
13 *decisis*, are in excess of jurisdiction, ..."

14 In re Berry (1968) 68 Cal.2d 137, 147, 65 CR 273; California
15 Retail Liquor Dealers Institution v. United Farm Workers (1976) 57
16 Cal.App.3d 606, 610.

17 Therefore, "a person affected by an injunctive order which
18 exceeds the jurisdiction of the issuing court has the choice of
19 complying with the order and bringing a judicial challenge, or
20 disobeying it and subsequently attacking its validity when he is
21 charged with contempt." United Farm Workers v. Superior Court
22 (1975) 14 Cal.3d 902, 907, fn. 3, 122 CR 827.

23 Here it may be applied to a case where, though the court
24 has jurisdiction over the subject matter and the parties in
25 the fundamental sense, it has no 'jurisdiction' (or power) to
26 act except in a particular manner, or to give certain kinds
27 of relief, or to act without the occurrence of certain
28 procedural prerequisites." (Abelleira v. District Court of
Appeal (1941) 17 Cal.2d 280, 288, 109 P.2d 942, 947.)
Accordingly, "An injunction based upon an unconstitutional
ordinance exceeds the issuing court's jurisdiction
[Citation.]" (Welton v. City of Los Angeles (1976) 18 Cal.3d
497, 507, 134 CR 668 ...) and cannot provide a basis for
adjudging the respondent party (here Opti-Cal) in contempt.

29 Ibid. at fn. 9.

30 Likewise, an injunction based upon a contract which is void
31 as either being in restraint of trade or against public policy is
32 subject to collateral attack. Thus, if a court grants injunctive
33 relief, which under no circumstances it has any authority to grant

1 to that extent its judgment is void. Hunter v. Superior Court
2 (1939) 36 Cal.App.2d 100, 97 P.2d 492.

3 **B. The Injunction Is Void For Vagueness Because It Does Not Put**
4 **Armstrong On Fair Notice Of What Conduct Is Prohibited**

5 It is a basic principle of due process that an enactment
6 is void for vagueness if its prohibitions are not
7 clearly defined. Vague laws offend several important
8 values. First, because we assume that man is free to
9 steer between lawful and unlawful conduct, we insist
10 that laws give the person of ordinary intelligence a
11 reasonable opportunity to know what is prohibited, so
12 that he may act accordingly. Vague laws may trap the
13 innocent by not providing fair warning. Second, if
14 arbitrary and discriminatory enforcement is to be
15 prevented, laws must provide explicit standards for
16 those who apply them. A vague law impermissibly
17 delegates basic policy matters to policemen, judges, and
18 juries for resolution on an ad hoc and subjective basis,
19 with attendant dangers of arbitrary and discriminatory
20 application. Third, but related, where a vague statute
21 "abut[s] upon sensitive areas of basic First Amendment
22 freedoms," it "operates to inhibit the exercise of
23 [those] freedoms." Uncertain meanings inevitably lead
24 citizens to "steer far wider of the unlawful zone . . .
25 than if the boundaries of the forbidden areas were
26 clearly marked.

16 Grayned v. City of Rockford (1972) 408 U.S. 104, 108-09.

17 Armstrong is enjoined from "directly or indirectly . . .
18 voluntarily assisting" individuals intending to make or litigate a
19 claim against Scientology regarding said claim, voluntarily
20 assisting such persons arbitrating or litigating a claim against
21 Scientology, but is not prohibited from "being reasonably
22 available for the service of subpoenas on him", testifying
23 truthfully, disclosing criminal conduct of Scientology to
24 authorities, and "engaging in gainful employment rendering
25 clerical or paralegal services not contrary to the terms and
26 conditions of this order."

27 Gerald Armstrong works for Ford Greene. Greene litigates
28 against Scientology. Does the mere fact of Armstrong's employment

1 by Greene constitute assistance within the terms of the
2 injunction? Is Armstrong in violation of the order when he works
3 on non-Scientology cases, because in so helping Greene carry his
4 case load he enables Greene to dedicate more time litigating
5 against Scientology? In other words by being a live, breathing
6 body in Greene's office providing assistance in non-Scientology
7 cases does Armstrong provide "indirect assistance" in Scientology
8 cases? Is Armstrong in violation of the injunction when he
9 answers the phone and somebody suing Scientology is on the other
10 end? If Armstrong orders office supplies some of which will be
11 used in anti-Scientology litigation, is he in violation? If
12 Armstrong handles outgoing Scientology-related mail? Opens an
13 envelope from Bowles and Moxon? Licks a stamp to be placed on a
14 letter to an anti-Scientology litigant? Goes to the post office?
15 Assembles exhibits to a brief opposing a Scientology motion?
16 Signs a proof of service when Mr. Greene is out of town?

17 How is Armstrong to ascertain what and who are "all
18 Scientology and Scientology affiliated organizations and entities
19 and their officers, agents, representatives, employees,
20 volunteers, directors, successors, assigns and legal counsel[?]"
21 Is he required to interview each person he does not know in order
22 to determine whether or not such person is affiliated with a
23 Scientology-related organization. Since the injunction is not
24 clear about what Armstrong can or cannot do, however, this
25 provision is vague and unclear.

26 **C. THE AMBIGUITY OF THE INJUNCTION ALLOWS SCIENTOLOGY TO**
27 **ENFORCE IT IN AN ARBITRARY AND DISCRIMINATORY MANNER**

28 Living under a rule of law entails various suppositions, one

1 of which is that all persons are to be entitled to be informed
2 what the State commands or forbids. Papachristou v. City of
3 Jacksonville (1972) 405 U.S. 156, 162. As in the case of an
4 ordinance, an injunction or court order is void for vagueness when
5 it fails to give a person of ordinary intelligence fair notice
6 regarding what contemplated conduct is forbidden, and because it
7 encourages arbitrary and erratic enforcement. Ibid. An ambiguous
8 and vague order

9 permits and encourages an arbitrary and discriminatory
10 enforcement of the law. It furnishes a convenient tool for
11 "harsh and discriminatory enforcement by local prosecuting
12 officials, against particular groups deemed to merit their
13 displeasure."

14 Id. 405 U.S. at 170.

15 These principles are "especially true where the uncertainty
16 induced by the [order] threatens to inhibit the exercise of
17 constitutionally protected rights." Colautti v. Franklin (1979)
18 439 U.S. 379, 391 quoting Grayned, supra.

19 **D. Scientology's Animus Against Armstrong**
20 **Has Been Judicially Recognized**

21 In Church of Scientology of California v. Armstrong (1991)
22 232 Cal.App.3d 1060, 1067, 283 CR 917, the Court of appeal
23 affirmed Judge Breckenridge's finding that Scientology declared
24 Defendant Armstrong to be a suppressive person which labelled him
25 as an enemy of the church and subjected him to the "Fair Game
26 Policy." According to the Fair Game Policy, such persons upon
27 whom it is imposed, "[m]ay be deprived of property or injured by
28 any means by any Scientologist without any discipline of the
29 Scientologist. May be tricked, sued or lied to or destroyed."

Ibid.

1 E. Scientology's Anti-Armstrong Animus Appears On The Face Of
2 Its Papers In Support Of The OSC Re Contempt And Motion In
3 Limine Because It Charges Conduct To Violate The Injunction
4 When It Clearly Does Not

5 In the instant matter, one need look no further than
6 Scientology's papers in support of its OSC and its motion in
7 limine to see the discriminatory enforcement of Judge Sohigian's
8 order at work.

9 In Scientology's memorandum in support of the OSC, it lists
10 "Armstrong's willful disobedience of the subject order (through
11 his refusal to cease and desist from the prohibited assistance
12 after direct notice and demand by Church counsel)" as set forth in
13 "Bartilson Dec. ¶¶ 4, 5, 9, 11, 12, 13, and 14." (Memo. in
14 Support of OSC at pp. 12:28-13:3.)

15 1. A Statement Of Intention Regarding The
16 Contract Is Not A Violation Of A Court Order

17 In paragraph 4, Bartilson states Armstrong's following
18 deposition statement to constitute a violation of the order:

19 A. . . . I have absolutely no intention of following
20 that settlement agreement. I cannot. I cannot logically. I
21 cannot ethically. I cannot morally. I cannot psychically.
22 I cannot philosophically. I cannot spiritually. I cannot in
23 any way. And it is firmly my intention not to honor it.

24 Q. No matter what a court says?

25 A. No court can order it. They're going to have to
26 kill me.

27 In fact, Armstrong is correct inasmuch as Judge Sohigian did
28 not order the performance of the contract. For example, he did
not order performance of the provisions requiring Armstrong not to
testify before any governmental agency unless subpoenaed and to

1 avoid service of process of such subpoena. ^{1/}

2 **2. Notification Of The Los Angeles Times Of The Issuance Of The**
3 **Injunction Is Not A Violation Thereof**

4 In Paragraph 5 of the Bartilson declaration, it is alleged
5 that Armstrong notified Los Angeles Times reporter Mr. Welkos of
6 the issuance of the Sohigian ruling. In no way can this possibly
7 be construed as a violation of the preliminary injunction.

8 **3. Providing A Videotape to Someone Whom A Scientology Staff**
9 **Member Is Suing Is No Violation Of The Order Because**
10 **It Is Beyond The Order's Scope**

11 In Paragraphs 21-22 of the Bartilson Declaration it is
12 alleged that Armstrong violated the Order by providing a
13 videotaped interview to Jerry Whitfield whom Scientology has sued
14 through one of its staff members in Casillas v. Whitfield, Los
15 Angeles Municipal Court Case No. 91K49349. Since Whitfield is a
16 defendant adverse to Scientology, he is beyond the scope of the
17 Order inasmuch as the Order applies only to individuals or
18 entities who are claiming against Scientology.

19 **4. Scientology Lulled Armstrong Into Believing That Routine**
20 **Clerical Duties Are Beyond The Scope Of The Injunction And**
21 **Now Predicates Such Actions As Injunction Violations**

22 Scientology at the May 27, 1992 hearing on its preliminary
23 injunction motion argued that Armstrong had violated the contract
24 by working as a paralegal for Ford Greene in violation of
25 Paragraph 7-G. (Exhibit C to Opposition to OSC, Transcript, May

26 ¹ Compare the provision of Paragraph 7-H requiring
27 avoidance of subpoenas to testify (OSC Appl. Ex. B, pp. 10-11)
28 with Paragraphs 6(a)-(d) of the preliminary injunction which allow
Armstrong not to avoid such service. (OSC Appl. Ex. A, p. 2.)
Likewise, the scope of 7-H in the contract is universal while the
Order does not limit Armstrong from providing information to
Governmental Agencies or to parties being sued by Scientology.

1 27, 1992, at p. 45:6-27)

2 As to such alleged violation, Scientology agreed there had to
3 be a "nexus between Armstrong's behavior on the one hand and
4 something having to do with information that he ha[d] because of
5 his affiliation with [Scientology] on the other hand[.]" (Id., at
6 p. 48:28-50:25.) Indeed, the discussion regarding Paragraph 7-G
7 between Judge Sohigian and Scientology counsel regarding "some
8 reasonable construction of the contract" (Id., at p. 51:11)
9 proceeded as follows:

10 THE COURT: . . . what we're trying to do is we're
11 trying to construe the agreement reasonably so that we know
12 what it means to quote "voluntarily assist or cooperate with
13 any person adverse to Scientology in any proceeding against
14 any of the Scientology organizations" and so forth, end
15 quote. Voluntary assistance or cooperation doesn't mean
16 voluntary assistance or cooperation which doesn't trade on
17 some special talent or skill Mr. Armstrong has . . .

18 MR. WILSON: Obviously not. I mean, obviously the
19 intent of the agreement was that there had to be some
20 connection between what Armstrong was doing and what he had
21 previously been involved with with the organization.

22 (Id., at p. 50:5-25.)

23 Thereafter, during the course of his July 22, 1992 session of
24 Mr. Armstrong's deposition, Mr. Wilson advised him that the
25 performance of routine clerical and paralegal duties were not
26 considered to be violations of a reasonable reading of the
27 injunction.

28 Q. . . . When was the last time you worked on the
Aznanan case as a paralegal?

A. Well, again, if by that you mean that because I'm a
paralegal I answered the phone when Vicky was calling, am I
working on the Aznanan case as a paralegal? [¶] If you say
that's not the case and that's not the way you construe
paralegal activity with regard to a case, then I would say
it's quite some time ago.

Q. That's how I understand paralegal activity. It's

1 not just that you answer the phone.

2 A. So it's not just clerical duties that I would do
3 with any, any case"

4 Q. I will define it this way. If you answer the phone
5 because one of your duties is to answer the telephone in the
6 office, that is not part of your duties as a paralegal on the
7 Aznaran case. [¶] But if you summarize a deposition, if you
8 prepare pleadings, if you file pleadings, it's a paralegal
9 duty. If you type pleadings, it's a paralegal duty.

10 A. Right. None of those things.

11 Q. When you say "quite some time," can you give me a
12 little bit more specifics on that and how long has it been
13 since you have done any paralegal work on the case?

14 A. Boy, I think probably, I think probably September
15 '91.

16 Q. Okay. Of course paralegal duties would include
17 communications from the Aznarans. Except if the
18 communication was "have Mr. Greene call me," I wouldn't
19 consider that a paralegal duty. But if the communication was
20 anything substantive with regard to the case, I would
21 consider that a paralegal duty, so would that change your
22 answer? Since September '91, have there been any substantive
23 communications about the case with the Aznarans without
24 revealing the communication.

25 MR. GREENE: That's fine. Go ahead and answer it.

26 THE WITNESS: Okay, then the answer is no.

27 (See, Exhibit K to opposition to OSC, at pp. 190:2-191:15)

28 Q. And in the intervening period when Mr. Greene was
not counsel of record, I take it you did no work on the
Aznaran case at all?

A. Again when you say no work on the Aznaran case,
we're using the same definition of paralegal?

MR. GREENE: Gerry, it's a simple question and again
it's a "yes" or "no" answer.

THE WITNESS: In that I received telephone calls at
that time or relayed telephone calls then which may have
related to the Aznaran case, then, yes, I did.

MR. WILSON: Q. It's possible that you may have
relayed a phone message that related to the Aznaran case; is
that right?

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A. Right.

Q. Except for that, have you done any work on the Aznaran case?

A. Except for phone messages?

Q. Right.

A. Routed or logged, mailed articles.

Q. Would that be the same way a receptionist or secretary would send mail around the office?

A. Exactly, right.

Q. And except for that, have you done anything related to the Aznaran case?

A. I believe that anything I have done relating to the Aznaran case has been that sort of office clerk, secretary in nature.

(Id. at pp. 197:3-198:10; see also, pp. 199:19-200:6)

Now, in contradiction of the foregoing representations of the scope of the order, Scientology asserts that Armstrong has violated the injunction by requesting a fax of a ruling in the Aznaran case (Bartilson Decl. ¶ 9), by executing two proofs of service in the Aznaran case (Bartilson Decl. ¶ 11), and by relaying telephone calls between the Aznarans and Ford Greene, and by providing unspecified assistance to claimants Tillie Good, Denise Cantin and Ed Roberts. (Bartilson Decl. ¶ 12.).

5. Conclusion

Evidence which pertains to Scientology's declaration of Armstrong as a suppressive person resulting in the imposition of the Fair Game Policy upon him is relevant to his defense of the ambiguity of the order and Scientology's discriminatory enforcement of it against Armstrong. Likewise, evidence pertaining to Scientology's litigation tactics and strategies in

1 implementing the Fair Game Policy is relevant as well. Thus,
2 Scientology's effort, in limine, to cut Armstrong off from
3 asserting this defense should be rejected.

4 **III. PUBLIC POLICY DEFENSE THAT THE CONTRACT IS INTENDED TO**
5 **OBSTRUCT JUSTICE AND WAS PROCURED BY FRAUD REQUIRE THE**
6 **EXAMINATION OF FACTS PRECEDING MAY 28, 1992.**

7 A party need not plead the illegality as a defense and the
8 failure to do so constitutes no waiver. In fact, the point may be
9 raised at any time, in the trial court or on appeal, by either the
10 parties or on the court's own motion. 1 Witkin, Summary of
11 California Law (1987), Contracts, § 444, at p. 397; LaFortune v.
12 Ebie (1972) 26 Cal.App.3d 72, 75; Lewis & Queen v. M.M. Ball Sons
13 (1957) 48 Cal.2d 141, 147-148. The court will look through
14 provisions, valid on their face, and, with the aid of parol
15 evidence, determine whether the contract is actually illegal or is
16 part of any illegal transaction. 1 Witkin, supra, § 445 at p. 398;
17 Lewis & Queen, supra.

18 The object of a contract must be lawful. Civil Code sections
19 1550, 1596. If the contract has a single object, and the object
20 is unlawful, the entire contract is void. Civil Code section
21 1598. Civil Code section 1668 states:

22 All contracts which have for their object, directly or
23 indirectly, to exempt anyone from responsibility for his own
24 fraud, or willful injury to the person or property of
25 another, or violation of law, whether willful or negligent,
26 are against the policy of law.

27 Witkin, California Criminal Law (2d ed. 1988), Vol. 2,
28 section 1132, at p. 1311, states:

It is obviously an obstruction of justice to conceal,
suppress, falsify or destroy evidence which is relevant and
known to be sought or desired for use in a judicial
proceedings or an investigation by law officers.

1 An agreement to suppress evidence or to conceal a witness is
2 illegal. Penal Code sections 136, 136.1 ^{2/} and 138. ^{3/}

3 The underlying settlement agreement in this case is illegal
4 because it was designed to suppress facts discrediting
5 Scientology, which thus suppressed would obstruct justice.

6 "Agreements to suppress evidence have long been held void as
7 against public policy, both in California and in most common law
8 jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d
9 829, 836-37; People v. Pic'1 (1982) 31 Cal.3d 731, 183 CR 685;
10 Mary R. v. B&R Corporation (1983) 149 Cal.App.3d 308, 196 CR 871.

11 Thus, where a contract is made either (1) to achieve an illegal
12

13 ² Penal Code section 136.1, in part, provides:

14 (a) Except as provided in subdivision (c), any person who
15 does any of the following is guilty of a misdemeanor:

16 (1) Knowingly and maliciously prevents or dissuades any
17 witness or victim from attending or giving testimony at any trial,
18 proceeding, or inquiry authorized by law.

19 (2) Knowingly and maliciously attempts to prevent or
20 dissuade any witness or victim from attending or giving testimony
21 at any trial, proceeding, or inquiry authorized by law.

22 (c) Every person doing any of the acts described in
23 subdivision (a) or (b) knowingly and maliciously under any one or
24 more of the following circumstances, is guilty of a felony . . .
25 under any of the following circumstances: . . .

26 (2) Where the act is in furtherance of a conspiracy...

27 (4) Where the act is committed by any person for pecuniary
28 gain or for any other consideration acting upon the request of
29 another person. All parties to such transaction are guilty of a
30 felony.

31 (d) Every person attempting the commission of any act
32 described in subdivisions (a), (b), and (c) is guilty of the
33 offense attempted without regard to success or failure of such
34 attempt.

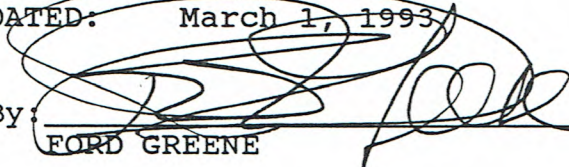
35 ³ "The general rule controlling in cases of this character
36 is that where a statute prohibits or attaches a penalty to the
37 doing of an act, the act is void . . . The imposition by statute
38 of a penalty implies the prohibition of the act to which the
39 penalty is attached, and a contract founded upon such act is
40 void." Smith v. Bach 183 Cal. 259, 262 quoted in Severance v.
41 Knight-Counihan Co. (1947) 29 Cal.2d 561, 177 P.2d 4, 8.

1 purpose, or (2) by means of consideration that is not legal, the
2 contract itself is void. Witkin, Summary of California Law (9th
3 Ed. 1987) Vol. 1, Contracts, § 441 at 396.

4 To enforce part of an illegal contract, it must be analyzed
5 as to whether it is "entire or severable." The key is if money
6 consideration can be apportioned to each of the items. Brown v.
7 Freese (1938) 28 Cal.App.2d 608. Whether a contract was entire or
8 separable depends upon its language and subject matter, and this
9 question is one of construction to be determined by the court
10 according to the intention of the party. The contract must have a
11 lawful object. Civil Code § 1596. If there is a single unlawful
12 object, it is void. Civil Code § 1608. Only when a contract has
13 clearly severable stipulations for each of which there is a
14 separate consideration expressed, and there is no reason to
15 suppose the expressed consideration for one part forms a part of
16 consideration for another part, can the contract be separated. 14
17 Cal.Jur.3d, Contracts, p. 336; McVicker v. McKenzie 136 Cal. 656.
18 Only if the court can lay illegal consideration to a specific
19 portion of the contract may it enforce other parts. Keene v.
20 Harling 61 Cal.2d 318.

21 Since the money paid to Armstrong logically is applicable to
22 the settlement of his cross-complaint, Judge Sohigian could not
23 apportion it to support the portions of the contract which violate
24 public policy.

25 DATED: March 1, 1993

26 By:  By: _____
27 FORD GREENE PAUL MORANTZ

28 Attorneys for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO MOTION IN LIMINE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal) I caused said papers to be personally service on the office of opposing counsel.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: March 1, 1993

